

AGG SMART Terms and Conditions

PARTIES

1. AGG SMART Ltd, a company incorporated in England and Wales (registration number 10942356) having its registered office at *Rivermead House, 7 Lewis Court, Grove Park, Leicester, LE19 1SD* (the "**Provider**"); and
2. The company associated with the logged in user of the AGG SMART system (the "**Customer**").

BACKGROUND

1. AGG SMART is a cloud-based customer management and shipping system for the concrete and aggregate sectors. You are entering into an agreement with AGG SMART for these services.

AGREEMENT

1. Definitions

- 1.1 Except to the extent expressly provided otherwise, in this Agreement:

"**Account**" means an account enabling a person to access and use the Hosted Services

"**Affiliate**" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in England;

"**Business Hours**" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"**Charges**" means the following amounts:

- (a) the amounts specified in Part 3 of Schedule 1 (Hosted Services particulars);
- (b) such amounts as may be agreed in writing by the parties from time to time; and
- (c) amounts calculated by multiplying the Provider's standard time-based charging rates (as notified by the Provider to the Customer before the date of this Agreement) by the time spent by the Provider's personnel performing the Support Services (rounded down by the Provider to the nearest quarter hour);

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

"Customer Confidential Information" means:

- (a) any information disclosed by the Customer to the Provider during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) was marked or described as "confidential"; or
 - (ii) should have been reasonably understood by the Provider to be confidential; and
- (b) the Customer Data;

"Customer Data" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer;

"Customer Indemnity Event" has the meaning given to it in Clause 17.3;

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement;

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

"Documentation" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"Effective Date" means the date of execution of this Agreement;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Services" means the *AGG SMART Service* as specified in the Hosted Services Specification, which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement;

"Hosted Services Defect" means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"Hosted Services Specification" means the specification for the Platform and Hosted Services set out in Part 2 of Schedule 1 (Hosted Services particulars) and in the Documentation;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintenance Services" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"Minimum Term" means, in respect of this Agreement, the period of 12 months beginning on the Effective Date;

"Mobile App" means the mobile application known as *AGG SMART APP* that is made available by the Provider through the *Google Play Store*, the *Apple App Store*, the *TomTom MDM* or directly via the *AGG SMART website*;

"Personal Data" has the meaning given to it in the General Data Protection Regulation (Regulation (EU) 2016/679);

"Platform" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"Provider Indemnity Event" has the meaning given to it in Clause 17.1;

"Schedule" means any schedule attached to the main body of this Agreement;

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"Set Up Services" means the configuration, implementation and integration of the Hosted Services in accordance with Part 1 of Schedule 1 (Hosted Services particulars);

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"Supported Web Browser" means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Provider agrees in writing shall be supported;

"Term" means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"Update" means a hotfix, patch or minor version update to any Platform software; and

"Upgrade" means a major version upgrade of any Platform software.

2. Term

- 2.1 This Agreement shall come into force upon the Effective Date.
- 2.2 This Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 20 or any other provision of this Agreement.

3. Set Up Services

- 3.1 The Provider shall provide the Set Up Services to the Customer.
- 3.2 The Provider shall use all reasonable endeavours to ensure that the Set Up Services are provided upon or promptly following the Effective Date.
- 3.3 The Customer acknowledges that a delay in the Customer performing its obligations in this Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 18.1 the Provider will not be liable to the Customer in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under this Agreement.
- 3.4 Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Set Up Services by the Provider shall be the exclusive property of the Provider.

4. Hosted Services

- 4.1 The Provider shall create an Account for the Customer and shall provide to the Customer login details for that Account on or promptly following the Effective Date.
- 4.2 The Provider hereby grants to the Customer a non-exclusive licence to use the Hosted Services by means of a Supported Web Browser for the internal

business purposes of the Customer in accordance with the Documentation during the Term.

- 4.3 The licence granted by the Provider to the Customer under Clause 4.2 is subject to the following limitations:
- (a) the Hosted Services may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer;
- 4.4 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 4.2 is subject to the following prohibitions:
- (a) the Customer must not sub-license its right to access and use the Hosted Services;
 - (b) the Customer must not permit any unauthorised person to access or use the Hosted Services;
- 4.5 The Customer shall use reasonable endeavours, including reasonable security measures relating to Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an Account.
- 4.6 The parties acknowledge and agree that Schedule 3 (Availability SLA) shall govern the availability of the Hosted Services.
- 4.7 The Customer must comply with Schedule 2 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer comply with Schedule 2 (Acceptable Use Policy).
- 4.8 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 4.9 The Customer must not use the Hosted Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 4.10 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 4.11 The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

5. Maintenance Services

- 5.1 The Provider shall provide the Maintenance Services to the Customer during the Term.
- 5.2 The Provider shall provide the Maintenance Services with reasonable skill and care.
- 5.3 The Provider shall provide the Maintenance Services in accordance with Schedule 4 (Maintenance SLA).
- 5.4 The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

6. Support Services

- 6.1 The Provider shall provide the Support Services to the Customer during the Term.
- 6.2 The Provider shall provide the Support Services with reasonable skill and care.
- 6.3 The Provider shall provide the Support Services in accordance with Schedule 5 (Support SLA).
- 6.4 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

7. Customer obligations

- 7.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:
 - (a) co-operation, support and advice;
 - (b) information and documentation; and
 - (c) governmental, legal and regulatory licences, consents and permits,as are reasonably necessary to enable the Provider to perform its obligations under this Agreement.
- 7.2 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under this Agreement.

8. Customer Data and External Submissions

- 8.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement, subject always to any express restrictions elsewhere in this Agreement.
- 8.2 The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 8.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.
- 8.4 The Customer shall be responsible for the accuracy, completeness, lawfulness and currency of all information supplied by or on behalf of the Customer for transmission through the Hosted Services, including information entered by its authorised users or imported from systems connected at its instruction. The Customer shall ensure that such information, including any quantities, classifications, descriptions and supporting records, is suitable for the intended submission and recipient.
- 8.5 The Customer authorises the Provider to transmit Customer Data on its behalf to governmental and regulatory bodies and other third parties through facilities enabled or instructed by the Customer or its authorised users, including automated transmissions under those settings or instructions (External Submissions). The Customer shall ensure that it has all necessary rights, lawful grounds and authorisations, and gives accurate instructions concerning the content and recipient. For Customer Personal Data, this authority is subject to Clause 14 and the Data Protection Laws.
- 8.6 Unless expressly agreed otherwise in writing, the Provider is not required to independently verify, audit or certify the factual accuracy, completeness or regulatory classification of customer-supplied information in External Submissions. Automated checks, calculations or recipient acknowledgements do not constitute such verification or certification, or guarantee that the Customer has fulfilled its legal obligations. This Clause does not relieve the Provider of its obligations concerning the proper operation of the Hosted Services.
- 8.7 The Customer remains responsible for its own statutory, regulatory and other reporting obligations, including applicable deadlines, supporting records and

corrections. The Customer shall review the submission information, statuses, acknowledgements and error notices made available to it, promptly investigate missing or rejected submissions, and arrange any necessary correction or alternative submission. The Customer shall promptly notify the Provider of any suspected error requiring the Provider's assistance. These responsibilities do not relieve the Provider of any expressly agreed submission, notification or correction obligations.

- 8.8 The Customer shall be responsible for explaining and substantiating information supplied by or on its behalf in connection with any enquiry, investigation or claim relating to an External Submission. The Customer shall retain supporting records for the applicable statutory period and promptly provide information and reasonable assistance needed to establish the facts and correct any customer-supplied error. Nothing in this Clause prevents the Provider from responding to a lawful request or requires either party to waive legal professional privilege.

9. Mobile App

- 9.1 The parties acknowledge and agree that the use of the Mobile App, the parties' respective rights and obligations in relation to the Mobile App and any liabilities of either party arising out of the use of the Mobile App shall be subject to separate terms and conditions, and accordingly this Agreement shall not govern any such use, rights, obligations or liabilities.

10. No assignment of Intellectual Property Rights

- 10.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

11. Charges

- 11.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.
- 11.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 11.2.
- 11.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 11.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation, providing that no such variation shall result in an aggregate percentage increase in the

relevant element of the Charges during the Term that exceeds 2% over the percentage increase, during the same period, in the Retail Prices Index (all items) published by the UK Office for National Statistics.

12. Payments

- 12.1 The Provider shall issue invoices for the Charges to the Customer from time to time during the Term.
- 12.2 The Customer must pay the Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 12.
- 12.3 The Customer must pay the Charges by debit card, credit card, direct debit, bank transfer or cheque (using such payment details as are notified by the Provider to the Customer from time to time).
- 12.4 If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:
 - (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

13. Provider's confidentiality obligations

- 13.1 The Provider must:
 - (a) keep the Customer Confidential Information strictly confidential;
 - (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent;
 - (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
 - (d) act in good faith at all times in relation to the Customer Confidential Information;
- 13.2 Notwithstanding Clause 13.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.
- 13.3 This Clause 13 imposes no obligations upon the Provider with respect to Customer Confidential Information that:

- (a) is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the Provider; or
- (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.

13.4 The restrictions in this Clause 13 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.

13.5 The provisions of this Clause 13 shall continue in force for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect.

13.6 Subject to Clause 14 and the Data Protection Laws, the Customer gives its prior written consent for the purposes of Clause 13.1(b) to disclosure of Customer Confidential Information to the recipients authorised under Clause 8.5, solely to the extent reasonably necessary to make or correct the relevant External Submissions. This consent does not authorise disclosure to unrelated recipients or for unrelated purposes.

14. Data protection

14.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

14.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement.

14.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to this Agreement, the Personal Data of data subjects falling within the categories specified in Part 1 of Schedule 6 (Data processing information) and of the types specified in Part 2 of Schedule 6 (Data processing information); and the Provider shall only process the Customer Personal Data for the purposes specified in Part 3 of Schedule 6 (Data processing information).

14.4 The Provider shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 14.

14.5 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the European Economic Area), as set out in this Agreement or any other document agreed by the parties in writing.

- 14.6 Notwithstanding any other provision of this Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 14.7 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 14.8 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in Part 4 of Schedule 6 (Data processing information).
- 14.9 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. The Provider is hereby authorised by the Customer, as at the Effective Date, to engage those third parties identified in, or falling within the processor categories specified in, Part 5 of Schedule 6 (Data processing information) to process the Customer Personal Data. In the case of a general written authorisation, the Provider shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Customer may terminate this Agreement on 7 days' written notice to the Provider, providing that such notice must be given within the period of 7 days following the date that the Provider informed the Customer of the intended changes. The Provider shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on the Provider by this Clause 14.
- 14.10 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 14.11 The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws.
- 14.12 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 14 and the Data Protection Laws.
- 14.13 The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.

14.14 The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 14. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 14.14.

14.15 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

15. Warranties

15.1 The Provider warrants to the Customer that:

- (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
- (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

15.2 The Provider warrants to the Customer that:

- (a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;
- (b) the Hosted Services will be free from Hosted Services Defects;
- (c) the application of Updates and Upgrades to the Platform by the Provider will not introduce any Hosted Services Defects into the Hosted Services;
- (d) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- (e) the Platform will incorporate security features reflecting the requirements of good industry practice.

15.3 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.

15.4 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

- 15.5 If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:
- (a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
 - (b) procure for the Customer the right to use the Hosted Services in accordance with this Agreement.
- 15.6 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 15.7 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

16. Acknowledgements and warranty limitations

- 16.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.
- 16.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.
- 16.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.
- 16.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

17. Indemnities

- 17.1 The Provider shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of

any breach by the Provider of this Agreement (a "**Provider Indemnity Event**").

17.2 The Customer must:

- (a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;
- (b) provide to the Provider all such assistance as may be reasonably requested by the Provider in relation to the Provider Indemnity Event;
- (c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Provider Indemnity Event; and
- (d) not admit liability to any third party in connection with the Provider Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Provider Indemnity Event without the prior written consent of the Provider,

and the Provider's obligation to indemnify the Customer under Clause 17.1 shall not apply unless the Customer complies with the requirements of this Clause 17.2.

17.3 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of this Agreement (a "**Customer Indemnity Event**").

17.4 The Provider must:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

and the Customer's obligation to indemnify the Provider under Clause 17.3 shall not apply unless the Provider complies with the requirements of this Clause 17.4.

- 17.5 The indemnity protection set out in this Clause 17 shall be subject to the limitations and exclusions of liability set out in this Agreement.
- 17.6 Notwithstanding Clause 17.3, indemnities for breaches of Clauses 8.4 to 8.8 are governed exclusively by this Clause 17.6. The Customer shall indemnify the Provider against liabilities, losses and reasonable costs (including legal expenses and costs of responding to enquiries, investigations and third party claims) to the extent caused by such breaches, excluding amounts attributable to the Provider's negligence, breach of this Agreement or unlawful act. Fines and penalties are covered only where their recovery is lawful. Clauses 17.4 and 17.5 apply as if the breach were a Customer Indemnity Event, except that the Provider may comply with legal or regulatory requirements and control its own communications and engagement with a regulator, consulting the Customer where lawful and reasonably practicable. The Provider shall take reasonable steps to mitigate losses covered by this indemnity.

18. Limitations and exclusions of liability

- 18.1 Nothing in this Agreement will:
- (a) limit or exclude any liability for death or personal injury resulting from negligence;
 - (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
 - (c) limit any liabilities in any way that is not permitted under applicable law; or
 - (d) exclude any liabilities that may not be excluded under applicable law.
- 18.2 The limitations and exclusions of liability set out in this Clause 18 and elsewhere in this Agreement:
- (a) are subject to Clause 18.1; and
 - (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.
- 18.3 The Provider shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.
- 18.4 The Provider shall not be liable to the Customer in respect of any loss of profits or anticipated savings.
- 18.5 The Provider shall not be liable to the Customer in respect of any loss of revenue or income.
- 18.6 The Provider shall not be liable to the Customer in respect of any loss of use or production.

- 18.7 The Provider shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.
- 18.8 The Provider shall not be liable to the Customer in respect of any loss or corruption of any data, database or software.
- 18.9 The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.
- 18.10 The liability of the Provider to the Customer under this Agreement in respect of any event or series of related events shall not exceed the greater of:
- (a) £5000; and
 - (b) the total amount paid and payable by the Customer to the Provider under this Agreement in the 12 month period preceding the commencement of the event or events.
- 18.11 Subject to Clause 18.1, the Provider shall not be liable to the Customer for losses arising from an External Submission to the extent caused by inaccurate, incomplete, outdated or unlawful information supplied by or on behalf of the Customer, or by the Customer's breach of Clauses 8.5 to 8.8. This exclusion does not apply to the extent that the losses are caused by the Provider's negligence, breach of this Agreement or unlawful act. Nothing in Clauses 8.4 to 8.8, 13.6, 17.6 or this Clause removes either party's statutory responsibilities, restricts any regulator's powers or excludes any liability which cannot lawfully be excluded.

19. Force Majeure Event

- 19.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 19.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- (a) promptly notify the other; and
 - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 19.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

20. Termination

- 20.1 Either party may terminate this Agreement by giving to the other party not less than 30 days' written notice of termination, expiring at the end of any calendar month.

20.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party commits any material breach of this Agreement, and the breach is not remediable;
- (b) the other party commits a material breach of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach).

20.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
- (d) if that other party is an individual:
 - (i) that other party dies;
 - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
 - (iii) that other party is the subject of a bankruptcy petition or order.

20.4 The Provider may terminate this Agreement immediately by giving written notice to the Customer if:

- (a) any amount due to be paid by the Customer to the Provider under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and

- (b) the Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 20.4.

21. Effects of termination

- 21.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 4.10, 8.8, 9, 12.2, 12.4, 13, 14.1, 14.3, 14.4, 14.5, 14.6, 14.7, 14.8, 14.9, 14.10, 14.11, 14.12, 14.13, 14.14, 14.15, 17, 18, 21, 24, 25, 26, 27, 28.1, 28.2, 29, 30 and 31].
- 21.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.
- 21.3 Within 30 days following the termination of this Agreement for any reason:
 - (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
 - (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of this Agreement,without prejudice to the parties' other legal rights.

22. Notices

- 22.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 22.2 and Part 4 of Schedule 1 (Hosted Services particulars)):
 - (a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or
 - (b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting,providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.
- 22.2 The Provider's contact details for notices under this Clause 22 are as follows:
AGG SMART Ltd, 7 Lewis Court, Grove Park, Enderby, Leicester, United Kingdom, LE19 1SD
- 22.3 The addressee and contact details set out in Clause 22.2 and Part 4 of Schedule 1 (Hosted Services particulars) may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 22.

23. Subcontracting

- 23.1 Subject to any express restrictions elsewhere in this Agreement, the Provider may subcontract any of its obligations under this Agreement, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.
- 23.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.
- 23.3 Notwithstanding the provisions of this Clause 23 but subject to any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

24. Assignment

- 24.1 The Customer hereby agrees that the Provider may assign, transfer or otherwise deal with the Provider's contractual rights and obligations under this Agreement.

25. No waivers

- 25.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.
- 25.2 No waiver of any breach of any provision of this Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of this Agreement.

26. Severability

- 26.1 If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.
- 26.2 If any unlawful and/or unenforceable provision of this Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

27. Third party rights

- 27.1 This Agreement is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.
- 27.2 The exercise of the parties' rights under this Agreement is not subject to the consent of any third party.

28. Variation

- 28.1 This Agreement may not be varied except in accordance with this Clause 28.

- 28.2 This Agreement may be varied by means of a written document signed by or on behalf of each party.
- 28.3 The Provider may vary this Agreement by giving to the Customer at least 30 days' written notice of the proposed variation, providing that if the Provider gives to the Customer a notice under this Clause 28.3, the Customer shall have the right to terminate this Agreement by giving written notice of termination to the Provider at any time during the period of 14 days following receipt of the Provider's notice.

29. Entire agreement

- 29.1 The main body of this Agreement and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 29.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.
- 29.3 The provisions of this Clause 29 are subject to Clause 18.1.

30. Law and jurisdiction

- 30.1 This Agreement shall be governed by and construed in accordance with English law.
- 30.2 Any disputes relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of England.

31. Interpretation

- 31.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 31.2 The Clause headings do not affect the interpretation of this Agreement.
- 31.3 References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.
- 31.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

EXECUTION

By logging into the AGG SMART service, you are agreeing your acceptance of this Agreement.

SCHEDULE 1 (HOSTED SERVICES PARTICULARS)

1. Set Up Services

Services will be set up within 10 working days. 3rd party additional services (such as connection into credit card systems) may take longer.

2. Charge of AGG SMART Services

AGG SMART services are charged per truck column per month. A truck column is one column on the AGG SMART calendar and may relate to an owned vehicle, a subcontractor vehicle, or another usage (such as collects or notes).

Adding vehicle columns to the system will increase the monthly subscription. Removing vehicles will not decrease the monthly subscription as these will be hidden to preserve historic data. But, if vehicles are added again in the future, the subscription will not increase unless total visible vehicles become larger than the current monthly charge.

The customer must provide 10 days notice for adding or removing trucks from the system. The subscription charge for any changes will be amended for the next billing cycle.

SCHEDULE 2 (ACCEPTABLE USE POLICY)

1. Introduction

- 1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:
- (a) the use of the website at <https://admin.aggsmart.co.uk>, any successor website, and the services available on that website or any successor website (the "**Services**"); and
 - (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
- 1.2 References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to *AGG SMART Ltd* (and "we" and "our" should be construed accordingly).
- 1.3 By using the Services, you agree to the rules set out in this Policy.
- 1.4 We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services.
- 1.5 You must be at least 18 years of age to use the Services; and by using the Services, you warrant and represent to us that you are at least 18 years of age.

2. General usage rules

- 2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.
- 2.2 You must not use the Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 2.3 You must ensure that all Content complies with the provisions of this Policy.

3. Unlawful Content

- 3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).

SCHEDULE 3 (AVAILABILITY SLA)

1. Introduction to availability SLA

- 1.1 This Schedule 3 sets out the Provider's availability commitments relating to the Hosted Services.
- 1.2 In this Schedule 3, "uptime" means the percentage of time during a given period when the Hosted Services are available at the gateway between public internet and the network of the hosting services provider for the Hosted Services.

2. Availability

- 2.1 The Provider shall use reasonable endeavours to ensure that the uptime for the Hosted Services is at least 98% during each calendar month.
- 2.2 The Provider shall be responsible for measuring uptime, and shall do so using any reasonable methodology.

3. Exceptions

- 3.1 Downtime caused directly or indirectly by any of the following shall not be considered when calculating whether the Provider has met the uptime guarantee given in Paragraph 2.1:
 - (a) a Force Majeure Event;
 - (b) a fault or failure of the internet or any public telecommunications network;
 - (c) a fault or failure of the Provider's hosting infrastructure services provider, unless such fault or failure constitutes an actionable breach of the contract between the Provider and that company;
 - (d) a fault or failure of the Customer's computer systems or networks;
 - (e) any breach by the Customer of this Agreement; or
 - (f) scheduled maintenance carried out in accordance with this Agreement.

SCHEDULE 4 (MAINTENANCE SLA)

1. Introduction

- 1.1 This Schedule 4 sets out the service levels applicable to the Maintenance Services.

2. Scheduled Maintenance Services

- 2.1 The Provider shall where practicable give to the Customer at least 5 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this Schedule 4.
- 2.2 The Provider shall provide all scheduled Maintenance Services outside Business Hours.

3. Updates

- 3.1 The Provider shall give to the Customer notice of the application of any major Update to the Platform.
- 3.2 The Provider shall apply Updates to the Platform as follows:
 - (a) third party security Updates shall be applied to the Platform promptly following release by the relevant third party, providing that the Provider may acting reasonably decide not to apply any particular third party security Update;
 - (b) the Provider's security Updates shall be applied to the Platform promptly following the identification of the relevant security risk and the completion of the testing of the relevant Update; and
 - (c) other Updates shall be applied to the Platform in accordance with any timetable notified by the Provider to the Customer or agreed by the parties from time to time.

4. Upgrades

- 4.1 The Provider shall produce Upgrades at least once in each calendar year during the Term.
- 4.2 The Provider shall give to the Customer at least 5 Business Days' prior written notice of the application of an Upgrade to the Platform.
- 4.3 The Provider shall apply each Upgrade to the Platform within any period notified by the Provider to the Customer or agreed by the parties in writing.

SCHEDULE 5 (SUPPORT SLA)

1. Introduction

- 1.1 This Schedule 5 sets out the service levels applicable to the Support Services.

2. Helpdesk

- 2.1 The Provider shall make available to the Customer a helpdesk in accordance with the provisions of this Schedule 5.
- 2.2 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.
- 2.3 The Provider shall ensure that the helpdesk is accessible by telephone, email and using the Provider's web-based ticketing system.
- 2.4 The Provider shall ensure that the helpdesk is operational and adequately staffed during Business Hours during the Term.
- 2.5 The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

3. Response and resolution

- 3.1 Issues raised through the Support Services shall be categorised as follows:
- (a) critical: the Hosted Services are inoperable or a core function of the Hosted Services is unavailable;
 - (b) serious: a core function of the Hosted Services is significantly impaired;
 - (c) moderate: a core function of the Hosted Services is impaired, where the impairment does not constitute a serious issue; or a non-core function of the Hosted Services is significantly impaired; and
 - (d) minor: any impairment of the Hosted Services not falling into the above categories; and any cosmetic issue affecting the Hosted Services.
- 3.2 The Provider shall determine, acting reasonably, into which severity category an issue falls.
- 3.3 The Provider shall use reasonable endeavours to respond to requests for Support Services promptly, and in any case in accordance with the following time periods:
- (a) critical: 1 Business Hour;
 - (b) serious: 4 Business Hours;
 - (c) moderate: 1 Business Day; and

(d) minor: 5 Business Days.

3.4 The Provider shall ensure that its response to a request for Support Services shall include the following information (to the extent such information is relevant to the request): an acknowledgement of receipt of the request, where practicable an initial diagnosis in relation to any reported error, and an anticipated timetable for action in relation to the request.

3.5 The Provider shall use reasonable endeavours to resolve issues raised through the Support Services promptly, and in any case in accordance with the following time periods:

(a) critical: 2 Business Hours;

(b) serious: 8 Business Hours;

(c) moderate: 4 Business Days; and

(d) minor: 10 Business Days.

4. Provision of Support Services

4.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

5. Limitations on Support Services

5.1 If the total hours spent by the personnel of the Provider performing the Support Services during any calendar month exceed *5 hours* then:

(a) the Provider will cease to have an obligation to provide Support Services to the Customer during the remainder of that period; and

(b) the Provider may agree to provide Support Services to the Customer during the remainder of that period, but the provision of those Support Services will be subject to additional Charges.

5.2 The Provider shall have no obligation to provide Support Services in respect of any issue caused by:

(a) the improper use of the Hosted Services by the Customer; or

(b) any alteration to the Hosted Services made without the prior consent of the Provider.